

New York Department of Transportation

Accommodation Plan
For Longitudinal Use of
Freeway Right-Of-Way
By Utilities

October, 1995

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ACCOMMODATION PLAN FOR LONGITUDINAL USE OF FREEWAY RIGHT-OF-WAY BY UTILITIES

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A. This Accommodation Plan is submitted pursuant to 23 CFR §645.209 and is subject to 23 CFR §645.211 and 645.215. It is applicable only to the occupation of freeways by lines, facilities or systems used for communications to the extent provided by 23 CFR §645.207(m) (hereinafter referred to as communications facilities or facilities). The longitudinal use of freeways by utilities shall not be allowed except in accordance with 17 NYCRR Part 131 and in particular §131.6, which requires a case-by-case evaluation of individual requests, and with the above federal requirements as implemented below. In no case shall any installation be allowed within the median of the freeway. In all cases, occupation of the right-of-way is subject to a use and occupancy agreement issued by the Department of Transportation under 17 NYCRR 131.16(d), containing the conditions of occupancy.

B. In recognition of the fact that certain public authorities, public benefit corporations and municipalities have exclusive jurisdiction and control of certain designated freeways covered by the above-mentioned FHWA Regulations, this Accommodation Plan shall apply to those designated freeways only to the extent that such public authority or public benefit corporation has not received FHWA approval of its own Accommodation Plan. When consummated, an informational copy of any formal agreement between the Commissioner and any responsible local officials, public authorities and/or public benefit corporations concerning the applicability of this (or other) utility accommodation plan to federally-aided freeways not under the Department's jurisdiction and control shall be provided to the Federal Highway Administration. Such agreement shall insure that the utility accommodation policies of the public authorities, public benefit corporations or municipalities shall provide at least the same measure of protection as provided by Part 131 NYCRR Title 17.

1. General Policy

The Department will make available the rights-of-way of freeways for the installation of communications facilities where they can be safely installed, operated, and maintained. For purposes of this plan install, operate and maintain shall include but not be limited to: construction, service, repair, replacement, inspection, etc.

Parties interested in using portions of the right-of-way of a freeway for longitudinal installations of communications facilities are encouraged to make their general interest known. Expressions of interest should be directed to the Director, Real Estate Division, Building 5, State Office Campus, New York State Department of Transportation, Albany, New York 12232.

2. Application Process

Where there is a reasonable expectation of interest in the installation of communications facilities within a portion of the right-of-way of a freeway, as evidenced by expressions of interest received by the Department and excess fiber optics capacity installed in the freeway right-of-way is not already available from another source, the Department will offer the right to install, operate, and maintain communications facilities within the right-of-way of specific portions of freeways through an open competitive process which involves advertisement, evaluation of proposals negotiation of an agreement with a selected proposer, and award of a contract.

a. Request for Proposals

The Department will advertise in the New York State Contract Reporter and in periodicals normally used for such purposes, a request for proposals for the installation, operation, and maintenance of communications facilities within the right-of-way of specified portions of freeways. Although requirements may vary between locations in some respects, each proposal will be required to include:

- (1) a plan and schedule for initial installation, including a traffic control plan in conformance with the Manual of Uniform Traffic Control Devices (MUTCD);
- (2) a plan for access to the communications facilities for operation and maintenance including traffic control plans in conformance with the MUTCD;
- (3) information regarding the general capacity of the facilities proposed to be provided and an analysis that shows how projected demand will be served by the proposed installed capacity; (Note: The Department is fully aware of the desire for confidentiality and will make every effort to proceed in that regard.)
- (4) a statement of the degree to which facilities, will be available, if at all, for the use of others and the terms and conditions of such use; and
- (5) the proposed payment to be made for occupancy of the freeway rights-of-way.

b. Review and evaluation of proposals will be by committee in accordance with criteria specified in the Request for Proposals. The committee will be composed of members designated by the Department. The committee may consult with the Public Service Commission and the Department of Economic Development in evaluating proposals. The criteria for evaluation will include:

- (1) The relative degree of disruption of the right-of-way during installation as shown in plans and schedules and the extent to which such disruption will affect traffic flow and safety, landscaping, and protected resources, as well as the freeway's appearance, its structural and controlled access integrity and its ability to be maintained, widened or otherwise modified. To minimize the disruption of the right-of-way during installation, all proposals must be in accordance with the following guidelines:

(a) All elements of a facility are to be installed in a designated "utility strip" to be established by the Department. The utility strip shall be approximately 10 feet wide and shall generally be established along the edge of the right-of-way. The utility strip shall fall within the edge of the right-of-way and the "roadway". Roadway is defined in the Department's design manual as "that portion of the highway included between the outside edges of the graded width of shoulder." The Department may authorize installation within the roadway in exceptional situations (e.g., to provide access to a bridge which is needed to carry the facilities over natural barriers). The location of the facilities shall be such as to minimize impact on highway use, safety, maintenance, aesthetics, and future highway improvements.

(b) Except as provided elsewhere in this document, facilities shall generally be installed in underground ducts or conduits and no part of the facility shall be visible from the roadway.

(c) The initial installation shall include all appurtenances necessary or incidental to the operation of the facility, and shall include manholes or other duct/conduit access points at appropriate spacings to permit the pulling of additional cables into the duct system without further excavation. Any electrical service necessary to operate repeater/booster stations or similar appurtenances shall be placed in underground ducts or conduits running from crossroads or frontage roads adjacent to the required point of access or from easements the utility owns. No longitudinal electrical line installation on the freeway right-of-way will be allowed. The utility shall furnish and pay for all materials, equipment, and labor required for the proposed installation.

(d) Installations of any part of a facility crossing the freeway, an interchange ramp roadway or any roadway shall be by a trenchless technology and shall be installed in a manner so as virtually to preclude any necessity for disturbing the roadways and their clear zones for installation, operation or maintenance. To the extent feasible and practicable, such crossings should be on a line generally normal to the roadway alignment.

(e) At bridge crossings or where unusual terrain, environmental, or other conditions warrant, the Department may authorize installation of a portion of the facility above ground, or under conditions which differ from those specified in this Plan, if it is found that there is no practicable alternative inside or outside the right-of-way and that the installation will not impair freeway safety or the aesthetic quality of the land traversed. However, no above ground facility that constitutes a fixed object will be allowed within the clear zone, nor will installation be allowed within the median.

(f) Where a facility installation must cross a major valley or river, such installation may be carried on an existing freeway structure only where the Department finds that such use of the structure will not interfere with the use or maintenance of the freeway and that denial of such use would result in significant harm to the environment. Similarly, such installation shall not be allowed to occupy vehicular tunnels without such a finding by the Department.

(g) In scenic areas, the Department may authorize installations only when they do not require extensive alterations of trees or terrain features visible to the highway user or impair the aesthetic quality of the land traversed. When installation of a facility is authorized, trees within nine feet of the center line of the designated facility area within the freeway right-of-way may be removed. This area may be kept clear of trees during the period of its use and occupancy by the facility.

(h) All methods of installation, as well as methods of erosion control and other details of installation of the facility, shall be subject to the review and approval of the Department.

(i) Upon completion of installation, all disturbed areas shall be returned to their original topography and all steps necessary to prevent future erosion shall be taken. Backfill shall be tamped and vegetation, other than trees, replaced. The Department may specify the type and location of replacement vegetation. The Department may require the completion by the selected proposer of an approved mitigation plan for replacement of tree loss created by the construction of the facility. The survival of all replacement trees and vegetation for a period of two (2) years following planting shall be guaranteed.

(j) Longitudinal occupancy of freeway rights-of-way shall be for transmission type facilities only. Service connections to adjacent properties will not be allowed from the freeway rights-of-way, including service connections at repeater/booster stations located on the freeway right-of-way.

(k) The proposal shall take into account planned or likely improvements or alterations in the nature or configuration of the highway and planned or likely improvements in the nature or configuration of facilities.

(1) The proposal shall also identify the direct and indirect environmental and economic effects of the loss of productive agricultural land or the productivity of any agricultural land which would result if the facility is not located within the freeway right-of-way. It shall also identify the potential impact upon freeway landscaping.

(m) Safety of the driving public and protection of the State rights-of-way for future use are of primary importance in allowing longitudinal occupancy by any facility. In no case will occupancy or access be permitted that will adversely affect safety.

(2) Measures to be taken to provide access to facilities from outside the right-of-way.

(a) To the greatest extent possible in light of the locations designated for the facility, access for installing, operating or maintaining a facility along or across a freeway should be limited to access via nearby frontage roads (where available), adjacent public roads and streets, or trails along or near but outside of the freeway right-of-way line, connecting only to an intersecting road, from any one or all of which entry may be made to the outer portion of the right-of-way.

(b) A locked gate along the freeway control-of-access fence may be utilized to meet periodic access needs. Where a gate is allowed, the use and occupancy permit shall include adequate provision against unauthorized use.

(c) The Department shall impose conditions for policing and other controls as are necessary to assure the safety of highway travelers and to avoid interference with freeway use. During installation, operation and maintenance, barriers and/or signs and/or other warning devices conforming to the MUTCD shall be installed as required and approved by the Department to alert and protect highway travelers to utility activities within the right-of-way. Where signs conforming to the MUTCD are

placed in the vicinity of the through roadway or clear recovery area, they shall be collapsible upon impact from a vehicle. Additional maintenance and protection provisions shall be as stated in the "general conditions" clauses of the Highway Work Permit. The Department reserves the right to require more stringent measures when it deems it necessary, as provided by Sections 126, 128, and 129, of NYCRR Title 17.

(d) Lane closures on the mainline or ramps of the freeway will not generally be permitted during the installation, operation, or maintenance of facilities.

(e) Access to facilities for installation, operation and maintenance within a freeway right-of-way will only be allowed in accordance with the provisions of a traffic control plan which is specified in the negotiated contract.

(3) The total capacity being installed. Installation of facilities shall be of a character and capacity to preclude the programmed need for any additional disruption. Absent compelling circumstances, the Department will not permit installation of additional ducts or conduits for a minimum of 10 years from initial construction. The Department will, however, allow installation of additional cable and/or replacement of existing cable within a previously installed duct or conduit to the extent it can be accomplished without direct or indirect interference with freeway traffic.

(4) The degree to which facilities, will be available, if at all, for use by others and the proposed terms and conditions of such use.

There is a presumption that it is in the public interest for the competing utilities to provide service within the available corridors. In order to protect and encourage such competition and ensure minimum future intrusion into the right-of-way and to avoid disturbance to traffic by installation of multiple facilities, the proposer is required to provide a description of the facilities, which will be available to others and how others will be provided access to the facilities proposed to be installed, if any. An outline of the terms and conditions under which the proposer would make such facilities available to other services shall be provided.

(5) Proposed payment or payments to be made for use and occupancy of the freeway right-of-way.

The Department may charge an assessment for the privilege of permitting installation of facilities and using the freeway right-of-way.

3. Contract Award

Award of a contract to a selected proposer in accordance with the general terms outlined in the proposal will usually be made within 90 days of the deadline for receipt of a complete proposal by the Department. Contract awards are subject to the negotiation of an acceptable contract and approval by Department Counsel, after consultation with the Division of the Budget, the Attorney General, and the Comptroller.

a. Contract Provisions - Contracts may vary but will generally include the following provisions:

(1) The Department reserves the right to restrict the use of freeway right-of-way. Such restrictions may include but not be limited to: number and types of facilities allowed; physical space occupied by the facilities or by equipment used for installation, operation and maintenance; time restrictions on installation, operation or maintenance; provisions of a traffic control plan for the maintenance and protection of traffic; system expansion, etc. The selected proposer may be required to make installations concurrent with others, so as to limit such work to one installation operation.

(2) Except where payment is required by Section 10, Subsection 24-b of the New York State Highway Law, any relocation of any fiber optics facility allowed to be on the freeway right-of-way, made necessary as a result of highway construction or maintenance operations, or changes in Department policy or design standards, shall be made promptly and at the expense of the selected proposer.

(3) The use of the freeway right-of-way shall be by a "Use and Occupancy Agreement" or other similar agreement obtained from the Department. Such Permit will require that a "Highway Work Permit" be obtained prior to actual installation. In addition an "Annual Maintenance Permit" must first be secured prior to the undertaking of any maintenance activity on the right-of-way. A Department approved traffic control plan for installation, operation and for future access is a prerequisite to issuance. Application and general conditions for such "Highway Work Permit" and "Annual Maintenance Permit" are explained in Title 17 Part 131 NYCRR.

(4) No permit to allow installation of a facility on freeway right-of-way will be issued nor will work commence until a contract is awarded to a selected proposer.

(5) Violation of the "Use and Occupancy Agreement", "Highway Work Permit", "Annual Maintenance Permit", or of any other law or rule at any time by the permit holder or its agent(s) in the installation, operation or maintenance of facilities within freeway rights-of-way shall be the basis for denial of use, imposition of fines, or physical removal of the offending party and/or the permit holder's facilities as designated in such permit, or as provided by law.

(6) The permit holder shall be responsible for obtaining all necessary permits, approvals, etc. required by any Federal agency or other State agency and shall furnish to the Department copies of such permits and approvals.

(7) Being permitted to use freeway rights-of-way does not automatically mean permission to use bridges. Any proposed use of bridges must be evaluated and approved by the Department as per Section 131.20 of 17 NYCRR. Any desire to install facilities on bridges or other structures must be stated in the initial application for any permit, together with whatever installation details the Department indicates are necessary to evaluate the proposal.

(8) The selected proposer shall be required under the Highway Work Permit to provide the Department with a log of each entrance onto the freeway rights-of-way with personnel and/or equipment to include date, time, duration, location of entrance onto and exit from the rights-of-way, and the reasons for such entrance and exit, the equipment and personnel involved, etc.

(9) The selected proposer shall install along with any buried facilities a system of continuous plastic ribbon or marking tape. Such marker shall be installed at a level no less than 12 inches below the surface of the ground. The marker shall include a metal thread or other system capable of reliably emitting a signal readable by located equipment operated on the surface. The selected proposer also shall install adequate permanent buried cable markers showing the approximate horizontal and vertical location of its underground facility. Such post markers shall not interfere with highway operations or maintenance and shall be offset from the actual location of the facility where necessary to avoid such interference. The selected proposer shall also maintain records that describe the facility, its location, depth, size, and other relevant data, which shall be available upon request to the Department and to other interested agencies. Within 120 days following the completion of the work authorized under a location permit, the selected proposer shall file with the Department one complete set of "as built" plans showing the locations of all parts of the facility. The selected proposer also shall file with the Department at that time one complete set of said plans on microfiche or other form of information storage system as determined by the Department.

(10) Except where this Plan or the use and occupancy permit calls for different procedures, the selected proposers shall comply with the construction standards, location standards, and special marking techniques established by the most recent publication of 23 CFR 645.

(11) The Department shall have authority to place inspectors on site to monitor and observe the selected proposer's activities, and/or to request the presence of state or local police to assure the safety of freeway travelers, at such times and for such periods as the Department deems appropriate. All costs thereof shall be borne by the selected proposer.

(12) Upon issuance of a permit and from time to time during any installation, operation, or maintenance periods, the selected proposer shall pay to the Department those amounts representing all of the costs of processing the application and administering the permit, including without limitation any costs relating to the need to relocate the facility in connection with any other work performed by the Department.

(13) Acceptance of a permit by the selected proposer shall constitute an agreement by the selected proposer, notwithstanding any other provision of law, to assume all liability for any loss, cost, damage, or harm arising out of or relating to the installation, operation or maintenance, of its facility and to the presence of its facility in the freeway right-of-way. Further, acceptance of a use and occupancy agreement shall constitute an agreement by the selected proposer to indemnify and hold harmless the State of New York, its officers, agents, and employees from all loss, cost, damage, and harm, including attorney's fees, arising out of or relating to the foregoing.

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